

ENTERED

October 27, 2022

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

LETICIA L. RIVAS,

Plaintiff,

VS.

DOLLAR FINANCE COMPANY,

Defendant.

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CIVIL ACTION NO. 7:21-CV-00375

**ORDER DENYING DEFENDANT'S MOTION TO RESCIND ORDER GRANTING
PLAINTIFF'S MOTION TO COMPEL, AND GRANTING ADDITIONAL TIME TO
RESPOND TO PLAINTIFF'S PENDING MOTIONS**

Now before the Court are Defendant Dollar Finance Company's Motion to Rescind the Court's August 30, 2022 Order Granting Plaintiff Leticia L. Rivas's Motion to Compel (Dkt. No. 29); Plaintiff's Motion for Attorney's Fees (Dkt. No. 30); and Plaintiff's Second Motion to Compel Defendant to Respond to Discovery or in the Alternative for the Entry of a Default Judgment against Defendant (Dkt. No. 42). This is an action involving Plaintiff's claims that Defendant harassed her by telephone in an effort to collect an alleged debt, in violation of the Telephone Consumer Protection Act and Texas Debt Collection Act, and Defendant's "Counter-Petition" complaining that Plaintiff secured a loan from Defendant without intending to pay. (Dkt. Nos. 1, 25). Shortly before the filing of the Counter-Petition, Plaintiff filed a Motion to Compel Defendant to respond to Plaintiff's interrogatories and requests for production, after Plaintiff's counsel's repeated inquiries had failed to secure the responses. (Dkt. No. 24). Upon consideration of the Motion to Compel, and given Defendant's failure to respond to it, the Court granted the Motion on August 30, 2022, ordering Defendant to respond to Plaintiff's interrogatories and requests for production within 14 days, and Plaintiff to submit a motion for attorney's fees incurred in moving to compel discovery by September 2, 2022. (Dkt. No. 28). Rather than comply, Defendant filed

its Motion to Rescind the Court's Order, justifying its failure to respond to Plaintiff's discovery requests by claiming that the only records in Defendant's possession had already been provided to Plaintiff, and consist of a few pages: Plaintiff's one-page promissory note in the amount of \$200.00 plus interest, and two additional pages containing basic information and activity on Plaintiff's account. (Dkt. No. 29). On the same day, Plaintiff timely filed her Motion for Attorney's Fees, seeking a fee award of \$2,205.00 (4.9 hours at \$450.00 per hour) incurred in preparing and filing the Motion to Compel granted by the Court. (Dkt. No. 30). Most recently, Plaintiff filed a Second Motion to Compel the outstanding responses to her interrogatories and requests for production, and award additional attorney's fees incurred, or in the alternative for Entry of a Default Judgment against Defendant as a sanction for its failure to comply with the Court's order to provide discovery. (Dkt. No. 42).

Whether or not the records attached to Defendant's Motion to Rescind are all that it has, the scarcity of documents in its possession does not constitute a valid excuse for the wholesale failure to respond to standard discovery requests. Therefore, the Court has no basis to rescind its August 30, 2022 Order granting Plaintiff's Motion to Compel, and hereby **ORDERS** that Defendant's Motion to Rescind is **DENIED**. Since Plaintiff's Motions, and Defendant's apparent choice not to respond to them, are arguably contingent upon this ruling, the Court hereby **ORDERS** that Defendant has 14 days within the date of this Order to respond to Plaintiff's Motions, and to provide the outstanding discovery responses. Failure to do so will result in an award of reasonable fees incurred by Plaintiff on the original Motion to Compel, and entry of the requested default judgment as a sanction for Defendant's failure to obey the Court's Orders to provide discovery. *See* FED. R. CIV. P. 37(b)(2)(A)(vi).

SO ORDERED October 27, 2022, at McAllen, Texas.

A handwritten signature in black ink, reading "Randy Crane". The signature is written in a cursive, flowing style. The first name "Randy" is written with a large, prominent "R" and a long, sweeping underline that extends across the signature. The last name "Crane" is written in a similar cursive style, with a long, sweeping underline that extends to the right.

Randy Crane
United States District Judge